

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RICHARD CHARETT and DEPARTMENT OF THE NAVY,  
BASE MAINTENANCE, Camp Lejeune, NC

*Docket No. 00-1046; Submitted on the Record;  
Issued April 19, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has a ratable hearing loss causally related to factors of his federal employment.

On July 16, 1999 appellant, then a 56-year-old wastewater treatment plant operator, filed an occupational disease claim alleging that he sustained a high frequency hearing loss in his right ear in the course of his federal employment. Appellant stated that he first became aware of his hearing loss in May 1999.

By letter dated November 16, 1999, the Office of Workers' Compensation Programs referred appellant, the case record and a statement of accepted facts to Dr. Walter Sabiston, a Board-certified otolaryngologist, for evaluation and audiometric testing.

Dr. Robert H. Hosea, a Board-certified otolaryngologist and associate of Dr. Sabiston, performed otologic evaluation of appellant and audiometric testing was conducted on the doctor's behalf on November 30, 1999. Testing at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear -- 10, 10, 10 and 30 decibels; left ear -- 5, 10, 5 and 15 decibels. The audiogram noted a calibration date of July 15, 1999.

In Dr. Hosea's report, he noted that appellant has evidence of a noise-induced neurosensory high frequency hearing loss, greater in the right ear than the left. Dr. Hosea opined that appellant's hearing loss was caused by exposure to loud noises at his workplace.

By memorandum dated December 9, 1999, the case file was referred to an Office medical adviser to determine whether appellant had a ratable hearing loss.

In a report dated December 10, 1999, an Office medical adviser reviewed the medical evidence of record. Applying the Office's standardized guidelines to the November 30, 1999 findings, the Office's medical adviser determined that appellant did not have a ratable hearing loss. Additionally, the Office medical adviser indicated that hearing aids would not benefit appellant.

By decision dated December 14, 1999, the Office determined that appellant sustained a hearing loss in the performance of duty but that, under the fourth edition of the A.M.A., *Guides*,<sup>1</sup> appellant's hearing loss was not ratable.

The Board finds that appellant has not sustained a ratable hearing loss causally related to factors of his federal employment.

The schedule award provision of the Federal Employees' Compensation Act provides for compensation to employees sustaining impairment from loss, or loss of use of, specified members of the body.<sup>2</sup> The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of the Office.<sup>3</sup> For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be a uniform standard applicable to all claimants.<sup>4</sup> The A.M.A., *Guides* has been adopted by the Office,<sup>5</sup> and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>6</sup>

Under the A.M.A., *Guides*,<sup>7</sup> hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz (Hz). The losses at each frequency are added up and averaged and a "fence" of 25 decibels is deducted since, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday sounds in everyday listening conditions.<sup>8</sup> The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss. The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss. The lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.<sup>9</sup>

The Office medical adviser applied the Office's standardized procedures to the November 30, 1999 audiogram obtained by Dr. Hosea. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed losses of 10, 10, 10 and 30 decibels, respectively. These losses were totaled at 60 decibels and were divided by 4 to obtain the

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<sup>1</sup> American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993), hereafter A.M.A., *Guides*.

<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> See *Arthur E. Anderson*, 43 ECAB 691 (1992).

<sup>4</sup> See *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961).

<sup>5</sup> FECA Program Memorandum No. 272 (issued February 24, 1986); see *Jimmy B. Newell*, 39 ECAB 181 (1987).

<sup>6</sup> *Danniel C. Goings*, 37 ECAB 781 (1986).

<sup>7</sup> A.M.A., *Guides* (4<sup>th</sup> ed. 1993).

<sup>8</sup> *Id.* at 224.

<sup>9</sup> *Id.*; see also *Danniel C. Goings*, *supra* note 6.

average hearing loss at those cycles of 15 decibels. The average of 15 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0 which was multiplied by the established factor of 1.5 to compute a 0 percent loss of hearing for the right ear.

Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed losses of 5, 10, 5 and 15 decibels. These losses were totaled at 35 decibels and were divided by 4 to obtain the average hearing loss at those cycles of 8.75 decibels. The average of 8.75 was then reduced by 25 decibels, as discussed above, to equal 0 which indicated a 0 percent loss of hearing in the left ear. The Office medical adviser then computed the binaural hearing loss by multiplying the zero by five to equal zero which was added to zero. Finally, the Office medical adviser divided this figure by six to arrive at a zero percent binaural hearing loss.

The Board finds that the Office medical adviser applied the proper standards, which are applied to all employees in hearing loss claims under the Act,<sup>10</sup> to the findings stated in Dr. Hosea's November 30, 1999 report and the accompanying audiogram. This resulted in a calculation of a nonratable hearing loss. The record contains no other properly certified audiogram<sup>11</sup> indicating that appellant has a compensable hearing loss. Thus, while appellant clearly has an employment-related hearing loss, it is not ratable under the standards used by the Office for determining schedule awards.

The December 14, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.<sup>12</sup>

Dated, Washington, DC  
April 19, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Priscilla Anne Schwab

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<sup>10</sup> See 5 U.S.C. § 8107(13).

<sup>11</sup> See *Joshua A. Holmes*, 42 ECAB 231, 236-37 (1990).

<sup>12</sup> In appellant's December 20, 1999 application for review to the Board, appellant requested that the Board address why he was not awarded hearing aids by the Office, when it was accepted that his hearing loss was work related. Inasmuch as the Office has not specifically addressed this issue in a final decision, it cannot be considered on review by the board. See 20 C.F.R. § 501.2(c).

Alternate Member